



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2004

Mr. Eugene D. Taylor
County Attorney
Williamson County
405 Martin Luther King Street, Box 7
Georgetown, Texas 78626

OR2004-4130

Dear Mr. Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201920.

The Williamson County Attorney's Office and the Williamson County Sheriff's Office (together, the "county") received several requests for information concerning Williamson County Commissioner Frankie Limmer.¹ You claim that the information at issue is excepted from disclosure under sections 552.108, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, you advise that one of the responsive documents you have submitted for our review was created after the date the county received one of the requests at issue, and is therefore not responsive to that request. From our review of the document and request at issue, it appears that the document may have been created on the same date the county received the request at issue. As you acknowledge, the Public Information Act does not require a governmental body to disclose information that was not in existence at the time the governmental body received the request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Thus, in the event the document you have marked did not exist at the time the county received the request at issue, the document is not responsive to that request

¹ You inform us that the county attorney is providing comments to this office concerning its own interests in the requested information and on behalf of the sheriff's office.

and need not be released. However, in the event the document did exist at the time the county received the request, the present ruling is applicable to that document.

We now turn to your claimed exceptions to disclosure. Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime[; or]

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state[.]

Gov't Code §§ 552.108(a)(1), (4). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the submitted information relates to a pending criminal investigation. Based on your representations and our review, we determine that the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). We therefore determine that section 552.108(a)(1) is applicable to the information.

We note, however that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You appear to contend that portions of the basic information that must be released are excepted under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home

address, home telephone number, social security number, and family member information of an employee of a governmental body, provided the employee elected to keep such information confidential pursuant to section 552.024 of the Government Code prior to the date the governmental body received a request for the information. Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, social security number, and family member information of peace officer as defined by article 2.12 of the Code of Criminal Procedure, irrespective of whether the peace officer timely elected to keep the information confidential.² We note, however, that the protections of section 552.117 only apply to information that the governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information in the hands of their employer); *see also* Gov't Code § 552.024 (establishing election process for section 552.117). In this instance, the submitted information is held by the county as a law enforcement entity, not as an employer of the individuals at issue. Consequently, we find that the none of the basic information may be withheld under sections 552.117(a)(1) or 552.117(a)(2) of the Government Code.

You also appear to contend that some of the basic information at issue is excepted from disclosure under section 552.1175 of the Government Code, which provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). You do not indicate, nor do the documents reflect, what portion of the basic information pertains to a licensed peace officer. *See* Open Records Decision No. 127 (1976) (witness information generally not included in basic information). Thus, we determine that section 552.1175 is not applicable to the basic information at issue.

² As you acknowledge, pursuant to a previous determination issued by this office in Open Records Decision No. 670 (2001), a governmental body may withhold information subject to section 552.117(a)(2) of the Government Code without the necessity of requesting a decision from the attorney general. As you have requested a decision in this instance, we address the applicability of section 552.117(a)(2) to the information at issue.

We conclude that, with the exception of basic information, the county may withhold the submitted information from disclosure pursuant to section 552.108(a)(1) of the Government Code.³ We note that the county has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

³ Based on this finding, we need not reach your other arguments under section 552.108 or your argument under section 552.101 of the Government Code.

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 201920

Enc: Submitted documents

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